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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,419	12/08/2004	Patrice Martinez	41052/309048	2579
23370	7590	06/23/2008		
JOHN S. PRATT, ESQ. KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER MATTER, KRISTEN CLARETTE	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 06/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,419

Applicant(s)

MARTINEZ ET AL.

Examiner

KRISTEN C. MATTER

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-26, 28-32, 34-36 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24, 30, 31, 35, 36 and 40-42 is/are rejected.
- 7) ☒ Claim(s) 25, 26, 28, 29, 32, 34 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Action is in response to the amendment filed on 4/29/2008. Claims 22-26, 28, 29, 32, 41, and 42 have been amended, claim 43 has been added, and claims 27, 33, and 37-40 have been cancelled. Currently, claims 22-26, 28-32, 34-36, and 41-43 are pending in the instant application.

Claim Objections

Claim 25 is objected to because of the following informalities: on line 3m it appears that "if" should be changed to --of-- to correct a typographical mistake. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 22, 23, 24, 30, 31, 35, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Sword et al. (US 6,401,716).

Regarding claim 22, Sword et al. discloses head protective equipment comprising a breathing mask (22) connectable to a breathing-gas source (column 2, lines 48-50) and adapted

to be applied over the bottom of a user's face, an eye protective shield (24), first lock element (72) located on said mask and a second lock element (62, 80) located on said shield adapted to engage and interlock with each other upon a movement having a downward component with respect to said user's face (see Figure 3 where the second locking mechanism must be pushed downward in order to get around button 84) and being directed in a first oblique direction oriented towards an inside of said mask (see arrow 82 on Figure 3).

Regarding claim 23, the flange (80) of the second lock element can be considered a nipple extending in the oblique direction.

Regarding claim 24, the groove (74) where the nipple is placed to connect the mask to the shield can be considered a substantially conical cavity (at least in cross-section) that narrows toward said first lock element (see Figure 7 where the cross-section of the cavity tapers in towards reference character 74) to help guide the second lock element into the first lock element located at a bottom of said cavity (i.e., the lock element includes both the top and bottom pieces 72 and 92 and therefore is positioned at the bottom of the cavity).

Regarding claim 30, the lock elements allow a movement of said shield with respect to said mask to favor the application of the shield over a user's face (see Figures 5 and 7).

Regarding claim 31, the flange (80) and lip of flap (71) can be considered links and the lock elements (62, 72) are moveable with respect to each other about a horizontal axis (see Figure 7). Note that the term "links" provides no real structural limitation because there is no description as to how these links operate together nor to how the horizontal axis is defined.

Regarding claims 35 and 36, Sword et al. discloses a harness with straps (44) and guidance members (110 or contour of shield) to become inserted under the straps and causing the straps to rise over the sides of the shield when putting the shield onto position on the mask.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sword et al. in view of Disney (US 4,774,939). Sword et al. does not disclose a support for attaching the shield to when not attached to the mask. Disney (Figure 5) discloses a storage means for masks (114) and eye shields (150) comprising a support (120) that has a lock element (peg 156) for connecting with a lock element on the shield (harness) that interlock by bringing the shield closer to the support with a movement having a downward component in order to secure the mask to the support even when the shield is not attached to the mask (mask is attached separately by peg 152). In order to lock (i.e., hang) the shield on the support a movement towards the inside of the support and downward is needed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a storage system and support as taught by Disney with the device of Sword et al. for allowing the shield to be locked to a support separately of the mask in case both were not needed for use at the same time (column 4, lines 15-35).

Allowable Subject Matter

Claims 25, 26, 28, 29, 32, 34, and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments, see section VIIB of the remarks section, filed 4/29/2008, with respect to the Sword reference have been fully considered but are not persuasive.

In response to applicant's argument that Sword discloses only an inward and upward movement as opposed to a downward movement, examiner respectfully maintains that the movement of Sword has a downward component (as indicated by arrow 78 in Figure 3 or arrow 90 in Figure 5) that allows the depression of button 84 to allow the nipple to be inserted into the second locking mechanism and secured.

Applicant's arguments, see section VIIIB of the remarks section, filed 4/29/2008, with respect to the Sword and Disney references have been fully considered but are not persuasive.

Hanging of the shield on the support as disclosed by Disney in it's broadest reasonable interpretation can be considered "locking" because it fixes the shield in place and makes it secure.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Kristen C. Matter/
Examiner, Art Unit 3771